

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC Communications, Inc., SBC)	
Delaware Inc., Ameritech)	
Corporation, Illinois Bell)	
Telephone Company d/b/a Ameritech)	
Illinois, And Ameritech Illinois)	
Metro, Inc.)	ICC Docket No. 98-0555
)	
Joint Application For Approval Of)	
The Reorganization Of Illinois Bell)	
Telephone Company d/b/a Ameritech)	
Illinois, And The Reorganization Of)	
Ameritech Illinois Metro, Inc. In)	
Accordance With Section 7-204 Of)	
The Public Utilities Act And For All)	
Other Appropriate Relief.)	

NEIGHBORHOOD LEARNING NETWORKS'
EXCEPTIONS TO HEARING EXAMINERS' PROPOSED ORDER

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INTRODUCTION

Throwing away an opportunity to bridge the digital divide, the Hearing Examiners have bought the Brooklyn Bridge. The August 10 HEPO approves the merger, despite the fact that SBC/Ameritech offer no evidence on the merger's impact on the "phoneless," or on other underserved markets. In these markets Ameritech is now (and for the indefinite future) the sole supplier--with an aggressive program to reclassify "regulated" services as "competitive," and then to raise prices.

What will be the effect on underserved Illinois markets when SBC/Ameritech is busy competing for corporate customers in 30 new markets throughout the country? The Indiana Utility Regulatory Commission got it right in its June 16, 1999 comments to the FCC: "SBC proposes to maintain the status quo in Indiana. Hence we are concerned that all we can expect is more substandard service quality, opposition to

[Commission] orders, insignificant local competition and no deployment of broadband services.”

Illinois has the worst recent record in the country in “phonelessness.” Almost 9% of the state’s population is without basic phone service. And there is a serious digital divide, segregating Illinois residents on the basis of education, income, and race, which evidence in the record shows is worsening and will be further exacerbated by the proposed merger.

The HEPO ignores the problems the merger creates for underserved markets and accepts SBC/Ameritech’s unsupported assertion that local telecommunications will be competitive in Illinois in just three years. This leads the Hearing Examiners’ to recommend that merger savings should only be shared for three years, and--remarkably--to conclude without explanation that it is “fair” for the Commission to allocate half these Illinois savings to Ameritech shareholders who will already receive a \$13.2 billion premium for their stock. Worse, again without a word of discussion, the HEPO uncritically accepts the notion that it is a sufficient remedy for Illinois residents to get dimes and quarters off their monthly phone bills in 2001--following what will surely be contentious debate by SBC/Ameritech on the nature and amount of savings, clear definitions of which the HEPO allows them to finesse.

Last week’s HEPO neither adequately summarizes the record, nor reaches the correct conclusions. Neighborhood Learning Networks testified and cross-examined witnesses last winter, and again in July, submitted written evidence, filed numerous briefs, and proposed ordering language. The recent HEPO, however, scarcely

acknowledges NLN's positions, let alone evaluates its arguments or analyzes its suggested relief.

The Examiners owe it to the Commission and to the people of Illinois to discuss the evidence presented by NLN that: (1) the merger would adversely affect competition and service to customers in underserved markets; (2) these adverse effects could only be mitigated by appropriately-funded community technology programs of the sort the California Public Utilities Commission prescribed before approving SBC's acquisition of Pacific Telesis in 1997; and (3) with \$1.4 billion in annual merger savings forecast by SBC there are more than ample resources to establish an Illinois Community Technology Fund (complete with education and neighborhood computer center components), and to flow substantial savings directly to Illinois ratepayers.

I. THE HEPO IGNORES THE MERGER'S IMPACT ON UNDERSERVED MARKETS

The Joint Applicants failed to prove that their merger would not diminish Ameritech's ability to provide adequate, reliable, efficient, safe and least-cost service to customers on the wrong side of the digital divide, or that the merger would not impede competition in residential, small business and other "underserved" markets. In fact, they have ignored the existence of such markets. Absent conditions aimed at mitigating the harmful effects of the merger on these customers, the Commission cannot find the facts required under Sections 7-204(b)(1) or (6).

The Joint Applicants concede by their silence (and the HEPO does not dispute) that the Commission has both jurisdiction over and the responsibility to protect "underserved markets," as they have been defined in the record. No evidence presented on reopening shows that Joint Applicants have given any consideration to safeguarding

these markets. The Joint Applicants contend that their belated FCC-induced commitments will bring new competition to Illinois telecommunications. But even the rosiest scenario does not contemplate what Joint Applicants cannot deny--that however potentially robust competition may be for downtown businesses, such positive developments are not likely to occur in lower priority markets. The National-Local Strategy, itself--the centerpiece of SBC's merger rationale, secured now by \$1.2 billion in prospective FCC penalties--is a prescription for focusing corporate energy and dollars on major corporations with operations outside of Illinois. Underserved markets in Illinois will get no more attention by SBC/Ameritech than they have received from the Hearing Examiners in this proceeding.

The HEPO is silent not only on the Joint Applicants' failure of proof as to their merger's effect on minorities, low income neighborhoods, the elderly, immigrants, and others with language difficulties, but entirely ignores the testimony offered on this subject by Don Samuelson, David Garth Taylor, and Vincent Gilbert. (Reopening direct testimony and cross-examination, July 1999.) The HEPO ignores overwhelming evidence that the merger will hurt competition and service in underserved markets. It ignores the fact that by creating a larger competitor for CLECs, the merger will further retard the CLECs provision of service to all but the most lucrative markets, as Covad's Clay Deanhardt acknowledged. (Tr. 2534-7, 2589-90.) It ignores Don Samuelson's reminder that history proves the validity of these predictions, given that there has been little movement to underserved markets in the three years since the Telecommunications Act of 1996 was passed. (Samuelson Reopening Direct at 27.) It even ignores David

Gebhardt's admission that those in underserved markets will gain nothing from the merger. (Gebhardt Reopening Rebuttal at 5.)

The evidence in this proceeding that there is a "digital divide" with respect to advanced telecommunications in Illinois is unrebutted and undeniable. Just the week before hearings resumed in this docket, the U.S. Commerce Department reported new data showing that the gap between information "haves" and "have nots" is persisting and in some cases widening. Secretary William Daley commented: "While we are encouraged by the dramatic growth in the access Americans have to the nation's information technologies, the growing disparity in access between certain groups and regions is alarming. We must ensure that all Americans have the information tools and skills that are critical for their participation in the emerging digital economy." Gilbert Ex. 2, "Falling Through the Net: Defining the Digital Divide," July 8, 1999. Chicago's Metropolitan Planning Council expressed the same concern in its 1998 report, "The Digital Network Infrastructure and Metropolitan Chicago," an exhibit to Don Samuelson's December 1998 rebuttal testimony, cited in each of NLN's briefs, and evidence never contested by the Joint Applicants.

Amazingly, the HEPO does not even mention this issue. Nor does it recite for the Commissioners the gist of Don Samuelson's July testimony that remedial programs for the disadvantaged must address this problem through public institutions: "It is in public institutions--rather than the home or workplace--that people with the lowest third of incomes, as well as other disadvantaged markets, are most dependent upon technology access and training. These groups are unlikely to have access to the Internet at home or at work. Their access is at schools, libraries and other neighborhood

locations. These are the institutions that must be supported and strengthened if we are going to be serious and effective in providing technology equity to the residents of Illinois. Support for these institutions and programs is at the heart of our recommendation to create an Illinois Community Technology Fund.” The general result of the Joint Applicants’ new commitments may be to foster local competition and service. But these measures cannot be expected to bring such benefits to underserved markets--especially not in the three year time period on which SBC/Ameritech witnesses Kahan and Gebhardt premised their arguments.

II. THE TECHNOLOGY PROGRAM CONDITIONS PROPOSED BY NLN ARE ESSENTIAL

Without an adequately-funded Illinois Community Technology Fund, the merger should be denied. California’s Public Utility Commission provided relief for underserved markets as part of the SBC/Pacific Telesis merger there. Under a utility merger statute similar to Illinois’, the PUC created an \$82 million California Community Partnership to provide education and access to underserved markets in that state. Though the subject of extensive testimony and exhibits by Messrs. Samuelson and Gilbert, the California example is nowhere mentioned in the HEPO. Instead, the HEPO blandly and without analysis simply adopts the Joint Applicants’ “additional commitments” to set up a \$3 million Consumer Education Fund, a \$3 million Community Technology Fund, and to provide \$1,450,000 for what appears to be a single Community Computer Center. (HEPO 122-3, 125, 133-4.)

The amounts proposed are appallingly low. While the direction is correct, the size of the Joint Applicants’ commitment is paltry and trivializes the serious problems their merger raises for an entire class of customers. The HEPO’s unreflective observation

that these commitments are “icing on the cake” is particularly egregious. The Joint Applicants’ \$7.45 million in community technology offerings is an order of magnitude too small to mitigate the hardships their merger creates. And these commitments are not “icing.” They are (insufficiently funded) conditions without which the merger cannot properly be approved. The necessary programmatic solutions to the merger’s impact on underserved markets are described in detail in NLN’s testimony and in the exhibits introduced with that testimony, none of which were disputed by the Joint Applicants. (See July 6, 1999 testimony and accompanying Exhibits A-H.) The HEPO’s failure to describe this part of the record is thus both glaring and unjustified. It is an omission that must be cured in the final draft order, just as the amounts should be increased to the levels NLN proposed, and the Joint Applicants should be required to commit to bring broadband advanced technology to underserved communities and to locate new job-creating subsidiaries in Illinois. See “Substitute Conditions” contained in NLN’s Post Hearing Brief, July 28, 1999, pp. 21-5.

Specifically, the final draft order should condition the merger on SBC/Ameritech providing between \$65 million in three-year funding (or larger amounts for five-six year funding) of community technology and consumer education fund remedies, as NLN proposed and the value of which is acknowledged in the small scale programs offered by SBC/Ameritech. The final order should direct the parties to submit their ideas on the funds’ structures and grant procedures within 30 days of its entry.

III. MERGER SAVINGS SHOULD BE DETERMINED CURRENTLY AND USED TO FUND PROGRAMS AS WELL AS CREDITS

The fact that the Joint Applicants--despite the Commission's express request ("Savings: Question 8")--essentially refused to estimate their Illinois merger savings should not be rewarded by an order putting off the computation called for by Section 7-204(c). Ameritech's Gebhardt admitted on cross-examination that all of his starting numbers came from Martin Kaplan's spring 1998 SBC due diligence, on which he had done no independent analysis, and that he had made no new savings calculations despite the Commission's explicit direction. (Tr. 2098, 2100-1.) If the data on which to determine savings is murky, it is because the Joint Applicants seek to drag out the day of reckoning until years from now in an accountants' proceeding with the merger accomplished and only the ICC staff looking over their shoulder. That is not what the statute provides. And it is not good policy, because it will delay the sharing of savings that are intended to compensate ratepayers during the period before even Joint Applicants believe that the hoped-for eventual competition will reduce the adverse effects of their merger.

Moreover, the HEPO offers no reason why (1) merger savings should be shared for only three years, (2) why just half the Illinois merger savings should be allocated to consumers, or (3) why all the consumer-allocated savings should go toward surcredits with none being devoted to community technology programs. (HEPO 86.) The HEPO's assertion that "three years represents a reasonable time frame given the state of competition in Illinois" is speculation apparently gleaned from Mr. Gebhardt, who conceded on cross-examination that he had no specific information, did not study, and knew of no documents that showed that the Illinois marketplace would be competitive in

three years. (Tr. 2110.) As to the allocation percentage, nothing in the HEPO denies that Ameritech's shareholders will receive an enormous premium that lavishly rewards them for having owned a company whose value has grown over its 75 years as a regulated monopoly. Finally, NLN has also submitted testimony and argument on the relative merits of small surcredits--which confer no tangible benefit on any individual ratepayers but which collectively constitute significant disinvestment in Illinois telecommunications--versus technology programs that build the state's economy and enhance social equity. None of these points is even discussed by the HEPO.

There is another alternative to the HEPO's 50% allocation, with all savings simply flowed through in a manner that offers no economic or structural benefits. The programs advocated by NLN and ordered by the California PUC could be financed out of the 50% otherwise paid to SBC, Ameritech's new shareholder. Section 7-204(f) authorizes the Commission to impose conditions it deems necessary to find that a reorganization warrants approval, and the record is clear that appropriately-funded community technology programs ought to be among those conditions. The HEPO should be revised accordingly.

IV. THE MERGER SHOULD ONLY BE APPROVED IF IT SERVES THE PUBLIC INTEREST

The HEPO nowhere speaks of the public interest or convenience. Yet that should be the touchstone for consideration of this merger. This is not just another business reorganization. The stakes are high. In Indiana, whose utility statute is narrower than Illinois', its Chief Justice recently lamented:

I find some modest solace in the acknowledgement of my colleagues that the policy arguments favoring supervision of business combinations such as the one before us today are 'compelling.' Slip. Opin. At 19. As a state of six million people, Indiana is a substantial economic enterprise. Still, we cannot hope to

thrive in the modern global economy unless our state acts with force and foresight at every opportunity. In the field of banking, Indiana missed the chance to be Ohio and largely became a branch office. We now seem at risk of dissipating our longstanding national advantage in the insurance industry. The executive department has decided to stand its ground in the field of telecommunications. I regret that the judiciary has let it slip away. Indiana Bell Telephone Company, Inc. v. Indiana Utility Regulatory Commission, 1999 WL 553724 (Ind. July 30, 1999; Shepard, Ch.J., dissenting).

Fortunately, the Illinois statute allows the full review not possible in Indiana. But at each stage in these proceedings the Hearing Examiners accepted what the Joint Applicants have proposed, without demanding solid evidence or more certain or effective commitments. In the reopened case, the Joint Applicants answered only some of the Commission's questions, and neither they nor the HEPO address what steps must be taken to ameliorate the negative effects of the merger on underserved markets.

The Illinois General Assembly plainly states the goal that should guide the Commission's decision: universally available, widely affordable, competitive telecommunications services in all markets. See the Public Utilities Act's legislative findings and declaration of Illinois telecommunications policy, 220 ILCS 5/13-102 and 13-103. Deciding how these policies are to be implemented may not be for SBC/Ameritech, or even for the Hearing Examiners. But it is the Commission's responsibility, as SBC's chief witness James Kahan stated early in these proceedings:

[T]hat's a public policy issue that the Commission - the ICC in Illinois should look at. . . . [I]t's a very valid concern. . . . We clearly, if we're not careful, are going to end up with a society of people that have access to the information and those that don't. and that has very serious implications not just to the telecom industry. The implications to the telecom industry are very small compared to the implications overall. But those are for policymakers to decide and evaluate, not for companies. (Kahan cross-examination, January 25, 1999, at 447.)

CONCLUSION

Now is the time and place for these public policy issues to be considered and resolved. To return to the HEPO's hapless description of the Joint Applicants' community commitments: One year after the announcement of the SBC/Ameritech merger, the Joint Applicants' proposal--and the second HEPO's discussion and order--offers too little icing on a poorly baked cake. NLN's positions should be fully summarized, the record should be fairly presented to the Commission, and the merger should only be approved if it is conditioned on a clear determination of savings and on adequately-financed community technology programs such as the public-private collaboration ordered in California and other states and now urged here by NLN.

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Respectfully submitted,

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